IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 671 OF 1988

THE STATE OF MAHARASHTRA .. APPELLANT
vs
1. GORAKNATH BAJIRAO PISE
Age 32 yrs.
2. BABURAO BAJIRAO PISE
Both r/o Jodmohoj Tal.
Pathardi, Dist. Ahmednagar.. RESPONDENTS

Mr. D. S. Mhaispurkar, APP

CORAM:-SMT. RANJANA DESAI &
A. S. OKA, JJ.
DATED:-6-9-2004

ORAL JUDGMENT:-(Per Smt. Ranjana Desai, J.)

The respondents (original accused 1 and 2) were tried in the court of II Addl. Sessions Judge at Ahmednagar in Sessions Case No. 143 of 1987 for offences punishable under Sections 307, 313 and 498-A read with 34 of the Indian Penal Code ("I.P.C." for short).

2. By his judgment and order dated 2nd of February, 1988, the learned Sessions Judge acquitted the accused of all the offences. Being aggrieved by the said judgment and order of acquittal, the State of Maharashtra has preferred this appeal.

3. In short the case of the prosecution is that on 25.7.1987 at about 11 a.m. accused 1 compelled complainant PW 2 Dwarkabai to drink poison in her mother's house with an intention to cause her death and he thus committed offence under Section 307 of I.P.C. Accused 1 also caused miscarriage of complainant Dwarkabai without her consent and thereby committed offence punishable under section 313 of the I.P.C. and that since the

marriage of Dwarkabai till 25.7.87 the accused treated the complainant with cruelty and thereby committed offence punishable under Section 498A read with 34 of the I.P.C.

4. In support of its case the prosecution examined as many as 13 witnesses. The star witness of the prosecution is PW 2 Dwarkabai.

5. The defence of the accused was one of denial. Accused 1 denied having illtreated his wife. He stated that he was residing separately from his brother for last about three and half years. According to him PW 2 Dwarkabai was insisting for mangalsutra made of gold which was accordingly prepared by him by taking loan of Rs.200/- from witness Bhimraj and it was given to him on 16th. He stated that he did not go to the house of his mother-in- law at Akhatwadi village and he did not give his wife any drug under the pretext of brandy. He contended that a false allegation is made against him and his brother. Accused 2 also denied the prosecution case. The evidence led by the prosecution did not find favour with the learned sessions Judge and he acquitted the accused. Hence this appeal.

6. We have heard the learned APP Mr. Mhaispurkar in support of the appeal. With his help, we have gone through the relevant record. The respondents' advocate is not present.

7. The learned APP submitted that PW 2 Dwarkabai's evidence is wrongly disbelieved by the trial court. Dwarkabai's evidence is cogent and consistent and it inspires confidence. There was no reason for Dwarkabai to involve her husband falsely. Dwarkabai's evidence is supported by the evidence of her mother PW 3 Kausabai. The

learned APP further submitted that the fact that poisonous drug was detected in the gastric lavage sample of Dwarkabai is established by the evidence of the doctor. The fact that accused 1 was in Akhatwadi village on the relevant day is established. A bottle containing poison was recovered at the instance of accused 1. The prosecution has proved that Dwarkabai was illtreated by accused 1 and members of his family. According to the learned APP in these circumstances the trial court should have convicted the accused. He urged that the judgment of acquittal be overturned and the accused be convicted in accordance with law.

8. We are not impressed by Mr. Mhaispurkar's submissions. It is true that the prosecution has successfully established that Dwarkabai became unconscious because of a poisonous substance which was found in her gastric lavage sample which was sent to the Chemical Analyser. PW 5 Dr. Kulkarni who was attached to Nityaseva Hospital at Shevgaon has stated that on 25.7.87 at 3.30 p.m. Dwarkabai was bought to the hospital in an unconscious condition. She was in the 7th month of pregnancy. She was treated as a case of Organophosphorous poisoning. Her abortion took place on the next day. He collected her gastric lavage sample. It was sent to the Chemical Analyser. Mr. Chemical Analyser's report Exh. 6 confirms that Organophosphorous insecticide was found in the gastric lavage sample of Dwarkabai. Dr. Kulkarni also confirmed that consumption of poisonous drug may be the cause of miscarriage of Dwarkabai. This part of the prosecution story is therefore, established. The question is who administered poison to Dwarkabai.

9. In our opinion, the prosecution has failed to prove the charge under Section498-A of

the I.P.C. According to Dwarkabai for four years after marriage no illtreatment was given to her by any member of the accused's family. It was only thereafter that at the instigation of accused 2, accused 1 started illtreating her because of her dark complexion. He started beating her. He wanted to marry again because she had scars on her face and she was dark. Dwarkabai has further stated that though she was in advanced stage of pregnancy accused 1 used to make her work on the road. He did not take her to her father's house though she requested him. Therefore, she herself went to her father's house.

10. We find it difficult to accept that Dwarkabai was illtreated because of her dark complexion and scars on her face. Admittedly no one illtreated her for this for four years after marriage. Dwarkabai has admitted that four years she was treated very well. It is significant to note that Dwarkabai bore a son who expired two years after marriage. The couple has a daughter. Dwarkabai was carrying for the third time. It is unlikely that suddenly the members of the accused's family would start illtreating her because of her dark complexion and scars on her face. While Dwarkabai was with her father accused 1 visited her twice excluding the alleged visit on the day of incident. Admittedly he had bought gold mangalsutra for her. He fondled the daughter. All this in not consistent with the behaviour of a man who is bent on illtreating his wife. Moreover Dwarkabai has not given any specific instances of illtreatment.

11. PW 3 Kausabai the mother of Dwarkabai has tried to support Dwarkabai on this aspect. She is an interested witness. She has also admitted that during the first four years after marriage there was no complaint about illtreatment from the accused. Even

Kausabai has not given any particulars of the illtreatment. Kausabai has not stated that accused 1 was ever asked why he was illtreating Dwarkabai or was requested not to do so through any relative. No such person is examined by the prosecution. The prosecution has also examined PW 4 Bhausaheb Ugale who is the cousin of Dwarkabai. He has stated that for last three years Dwarkabai was complaining that she was disliked by her husband because she is black and has scars on her face and that she was being illtreated and beaten by the accused. In the cross-examination this witness has admitted that Dwarkabai was living happily at her husband's house for four years after marriage. In those four years nobody said anything to her because she was dark and she had scars on her face. He has admitted that he had personally not seen the illtreatment. He has admitted that for the first time in the court he was stating that Dwarkabai had told him in Diwali festival that the accused were illtreating her and at that time he asked accused 1 why he was behaving like this with her. We feel that evidence of Kausabai and Bhausaheb being evidence of interested witnesses cannot be relied upon. Moreover, it is vague. No instances of illtreatment are given. Only general statements are made by these witnesses which are not supported by independent evidence. In the facts of this case, in the face of admission made by all these witnesses that Dwarkabai was treated very well for the first four years, it is difficult to accept the prosecution story that suddenly Dwarkabai was illtreated because she was dark and had scars on her face. The prosecution has thus failed to prove the charge under Section 498A of the I.P.C.

12. To establish its case that accused 1 administered poison to Dwarkabai the prosecution relies heavily on Dwarkabai's evidence. We have already noted that the prosecution has failed to prove that the accused illtreated Dwarkabai. Whether

Dwarkabai is telling the truth can be judged by a close scrutiny of her evidence. She has admitted that for four years after marriage she was treated very well by her husband and his family. Thereafter the illtreatment started because she is dark and has scars on her face. She was in advanced stage of pregnancy. She had requested accused 1 to take her to her father's house. Accused 1 refused. He used to make her work. So she herself went to her father's house. According to her, her husband came to meet her in her father's house twice excluding the alleged visit on the date of the incident. She has admitted that on both these visits he behaved nicely with her. He talked with her lovingly. She has admitted that her father owns bagayat lands. He is serving in public works department. There can be no doubt that the accused are not so affluent. It is against this background that the admission made by Dwarkabai that on one of his visits accused 1 told her that we may be poor but you should not have come to your father's house unless someone comes to fetch you will have to be appreciated. The story that accused 1 was illtreating her and he did not want to take her to her father's house appears to be false. Accused 1 only wanted her father to send someone to take her to his house. If accused 1 was illtreating her there was no reason for him to visit Dwarkabai twice at her father's house and talk to her lovingly. It is pertinent to note that Dwarkabai has admitted that she insisted that she should be given mangalsutra made of gold and on the day of incident accused 1 had brought beads of gold to her. When she asked for them he told her that he would put them in a string and give them to her. He fondled their daughter. It is her case that after her mother went to purchase oil along with their daughter accused 1 administered poison to her.

13. We find it difficult to believe this story. Dwarkabai's account about accused 1's

behaviour on the two earlier visits and also on the day of incident makes her story that accused 1 made her drink poison suspect. It does not stand to reason that accused 1 who had lost one son, who had one small, surviving daughter and whose wife was carrying for the third time would want to administer poison to his wife. From the social background of the strata of the society from which he comes, one would expect him to have a desire for a male child. Moreover, if he wanted to give poison to his wife he would certainly not choose to do so in his father-in-laws house where there were chances of his being caught. He could have done that in some other secluded place.

14. Besides, we do not find necessary corroboration to the version of Dwarkabai. Her mother PW 3 Kausabai has tried to support her. Kausabai has not seen accused 1 administering poison to Dwarkabai. She has stated that on the day of the incident accused 1 came to their house. He took his daughter on his lap. She went to buy oil for cooking along with Dwarkabai's daughter. When she came back she found Dwarkabai unwell. Fluid was coming out of her mouth. She asked her what had happened. Dwarkabai told her that her husband had forced her to take a drug. Accused 1 was standing at the door. Seeing her he left the house. She asked PW 4 Bhausaheb to go and see where accused 1 had gone.

15. PW 4 Bhausaheb, cousin of Dwarkabai has stated that on hearing cries of Kausabai he came there. He saw Dwarkabai in unconscious condition. His aunt asked him to go in search of accused. He went to the phata on a bicycle. He found accused 1 in a frightened condition. He brought him to the vasti on the bicycle. Accused 1 ran away on the pretext that he wanted to drink water. We find it difficult to rely on this witness. PW 13

Sahebrao Pawar PSI attached to Shevgaon Police Station had recorded his statement. PSI Pawar has stated that this witness did not state in the police statement that accused 2 had illtreated Dwarkabai because she was dark and had scars on her face. He has further stated that this witness did not state before him that he had gone to see accused 1 on bicycle; that he brought accused 1 on his bicycle upto vasti and that accused 1 was in a confused and frightened condition. This completely exposes the prosecution case. It is doubtful whether accused 1 was really in the village on the relevant day. It is significant to note that this witness did not lodge any complaint to the police though he had seen Dwarkabai in unconscious condition.

16. The prosecution has examined PW 6 Digamber Ugale, police patil of village Akhatwadi. He has stated that at 10 a.m. on 25.7.1987 he saw accused 1 in village Akhatwadi. He had gone to Shevgaon. When he returned at 3 p.m. he came to know that accused 1 had administered poison to his wife. He has also stated that he had come to know that Dwarkabai was being illtreated by her husband. In the cross-examination he has admitted that he had hearsay knowledge about illtreatment given to Dwarkabai. though he had been a police patil for 27 years he did not give any khabri report to the police station. He did not submit any occurance report to the police. On the next day he went to the hospital and then he states that neither Dwarkabai nor any member of her family told him how Dwarkabai took the medicine. We feel it unlikely that Dwarkabai or at least members of her family would not tell a police patil that accused 1 had administered poison to Dwarkabai. He did not lodge any complaint to the police. He has admitted that for the first time in the court he has disclosed that he had seen accused 1 on 25.7.1987. We, therefore, find it difficult to rely on the claim of this witness that he had

met accused 1 on the day of incident.

17. PW 7 Sahebrao Ugale is also examined to establish the presence of accused 1. He says that on the day of the incident he was going to his field from the house of Jadhav at about 10 a.m. He saw accused 1 talking to Dwarkabai inside the house of Jadhav. He went to his field and came back. He heard Kausabai shouting. He saw Dwarkabai lying unconscious. It is very difficult to believe that while going from the house of Jadhav he could have seen accused 1 who was sitting inside the house talking to Dwarkabai. Moreover in the crossexamination this witness has stated that he did not narrate the incident to anyone and for the first time he was disclosing about it in the court. Such a witness cannot be relied upon.

18. PW 8 Shaikh Ibrahim is the shop owner from where Kausabai is said to have bought oil. He has stated that when he heard cries coming from the house of Ugale he went there. Dwarkabai was lying unconscious. PW 3 Kausabai told him that accused 1 had given her medicine. His statement is recorded on 28.7.87. He does not claim that he had seen accused 1 in the house. His evidence is, therefore, of not much use to the prosecution.

19. PW 9 Baburao Ugale is pancha to two panchanamas. He has stated that on 28.7.87 he was called to the police station. Accused 1 was present. He agreed to produce bottle of Rogar. His statement was recorded (Exh.24). Accused 1 led them to the river. He took them to a Beshrma tree. He took out a bottle from the tree. It was attached under panchnama Exh. 25. It is the case of the prosecution that this bottle was sent to the

Chemical Analyser. The Chemical Analyser's report confirms that it contained the same poisonous insecticide which was found in the gastric lavage sample of Dwarkabai.

20. Baburao Ugale was again called on the next day. Accused 1 agreed to produce gold mangalsutra. His statement was recorded (Exh. 26) He led them to Mohoj. He stopped the jeep in a lane. He called one Bhimrao with whom he had kept the mangalsutra. Bhimrao produced the mangalsutra and beads. They were attached under panmchnama Exh. 27. The question is how authentic are these panchnamas. It is a strange coincidence that the police should choose one Ugale to become pancha. At least the other witness ought to have been examined. That is not done. This witness is made to act as a pancha to the two vital panchnamas. So far as the discovery of bottle is concerned, it does not stand to reason that accused 1 would preserve it and hide it in a tree. The safest way out for him was to throw it away. This discovery in our opinion is suspect.

21. Moreover from the timings of the panchnamas it appears that they were made at the police station Exh. 24 is the memorandum under which statement of accused 1 that he would produce a bottle was recorded. It commenced at 8 a.m. and was completed at 8-10 a.m. Exh. 25 is the panchnama under which the bottle is supposed to have been attached. It started at 8-10 a.m. and was completed at 9-30 a.m. Exh. 26 is the memorandum under which statement of accused 1 that he would produce mangalsutra and beads was recorded. Its writing commenced at 4 p.m. and was completed at 4-10 p.m. Exh. 27 is the panchnama under which the said ornaments were seized. It commenced at 4-10 p.m. and was completed at 5-45 p.m. PW 9 Baburao Ugale has himself stated that it took PW 10 Bhimraj two hours to produce the ornaments. Timings of these panchnamas therefore,

make them unreliable. It may also be stated here that PW 10 Bhimraj has not supplied the prosecution case.

22. Though Dwarkabai has stated that accused 1 had administered poison to her and Kausabai has tried to support her there is no corroboration to their evidence from the other evidence on record. We have already noted that Dwarkabai's evidence also does not inspire implicit confidence. The possibility of her trying to commit suicide and then the family trying to implicate accused 1 cannot be ruled out. It is significant to note that the doctor gave intimation from the hospital on 25.7.87 at 3.15 p.m. regarding the admission of Dwarkabai with history of poisoning. It is at Exh. 5. PW 12 Nandkumar Sonis police head constable was attached to Shevgaon police station. He has stated that he took note of Exh. 5. He went to the hospital. According to him parents and brother of Dwarkabai were present. Surprisingly he states that he did not make any inquiry with them and they also did not tell him anything. He was in the hospital for half an hour. He makes bold to say that he was not satisfied about the occurrence of cognizable offence and hence he did not make inquiry with the relatives. It is inconceivable that he would not enquire with the relatives or the relatives would not tell him anything. If accused 1 had given poison to Dwarkabai, the members of her family particularly the mother would have told him about it. The fact that this witness is denying it suggests that the prosecution is not coming out with the truth. Genesis of the case is being suppressed. Why mother's complaint was not recorded is a mystery and it casts shadow of doubt on the credibility of the prosecution story.

23. It is significant to note that PW 5 Dr. Govind Kulkarni who treated Dwarkabai at

Nityaseva Hospital has stated that Dwarkabai was brought to the hospital in unconscious condition. Her relatives informed him that she had consumed some liquid and had vomited many times. Thereafter she became unconscious. The doctor has also added that a woman relative was with the patient. They specifically told him that she had taken some liquid. He has repeated in cross-examination that no other information was given to him except this. If Kausabai was told by Dwarkabai that accused 1 gave her poison and this fact was told by Kausabai to other relatives, it is surprising why they did not inform the doctor about it. Significantly they told him that Dwarkabai had taken some liquid. Dr. Kulkarni is an independent witness. There is no reason for him to tell lies in the court. This conduct of Kausabai, Bhaurao and other relatives of Dwarkabai creates doubt about the prosecution story. It is quite possible that Dwarkabai had tried to commit suicide and she and her family have tried to falsely implicate the accused.

24. In our opinion therefore, the prosecution has failed to prove its case beyond reasonable doubt. The view taken by the trial court is a reasonably possible view which, we are unable to upset in an appeal against acquittal. In the circumstances, we dismiss the appeal.

(SMT. RANJANA DESAI, J.)

(A. S. OKA, J.)